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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1961

No. 19

CHARLES PAUL, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General of the State of California,

Appellants,

vs.

UNITED STATES,

Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

AMICUS CURIAE BRIEF OF PETALUMA COOPERATIVE CREAMERY IN SUPPORT OF APPELLANTS' JURISDICTIONAL STATEMENT.

JOSEPH A. RATTIGAN,
1041 College Avenue,
Santa Rosa, California.
Attorney for Amicus Curiae.

PERNAU WALSH PRINTING CO., SAN FRANCISCO

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BRIEF FILED WITH CONSENT OF PARTIES

All parties to this case have consented to the filing of this brief. Their written consents are filed concurrently herewith.

INTEREST OF AMICUS CURIAE

Petaluma Cooperative Creamery is a nonprofit cooperative association, organized in corporate form under California Agricultural Code Sections 1190 et seq. It was founded in 1913. Its members are 275 independent milk producers who own and operate dairy farms in North Coastal California. Each of them, and their cooperative entity, are "small business concerns" within the meaning of Section 2(b) of the Armed Services Procurement Act of 1947 (62 Statutes 21, 10 U.S.C. 2301 et seq.). An interpretation of the Armed Services Procurement Act is directly involved in this case.

The members of Petaluma Cooperative Creamery (hereinafter referred to as "Petaluma Co-op") own dairy farms in Marin, Sonoma, Napa, Lake and Mendocino Counties in California. Among them and through their cooperative entity (Petaluma Co-op, Amicus), they produce 20 million gallons of fluid milk each year. This is approximately one-fortieth of the entire annual fluid milk production of California. Petaluma Co-op's and its members' production area is one of the major milksheds in the United States.

The 20-million gallon output of its members is entirely shipped to Petaluma Co-op. Approximately

60% of this milk is resold to other milk distributors. Under the California Milk Stabilization Act (Sections 4200 to 4420, inclusive, California Agricultural Code), Petaluma Co-op, as a producer, receives a producer price for this milk, as established for its marketing area by the Director of the California Department of Agriculture (Section 4246, *Ibid.*).

Thus, Petaluma Co-op, as a cooperative association, is a milk producer under the California Act. It is also a distributor ("Producer-distributor", Section 4217, *Ibid.*). As a distributor, Petaluma Co-op sells approximately 40%, the balance, of its producers' annual 20-million-gallon milk output to retail stores and consumers. Under the California Act, it receives, for the milk in this category, the minimum wholesale or retail price established by the Director (Sections 4350 et seq., *Ibid.*). These prices are based, *inter alia*, upon Petaluma Co-op's production and handling costs as a distributor (Section 4355 [d] and [e], *Ibid.*).

The price received by Petaluma Co-op for its milk depends upon the classification—i.e., usage—of the milk sold (Sections 4225 to 4231, *Ibid.*). Its most favorable price is that for Class One milk defined in Section 4225 (*Ibid.*). The price recovered for milk it sells as a producer will vary with usage. The milk it sells as a distributor is all in a Class One usage. Petaluma Co-op recovers a Class One price for all of it, returning to its producer members the Class One producer price for that milk. In this category, Petaluma Co-op formerly bid on milk contracts for Federal military installations. Its bid was the Class One

wholesale price it was entitled to recover for the Class One usage involved, less a quantity discount permitted by State law and by the Director.

Under the instant injunction, the low-bid price collectible by Petaluma Co-op in military business cannot be the discounted Class One wholesale price to which it is entitled under the California Act. Against the sole alternative of selling below cost, the military market is no longer economically feasible to Petaluma Co-op. Nor is it legally feasible. The injunction itself is under a stay as to the minimum *producer* pricing provisions of the State law. Petaluma Co-op, therefore, is in a wholly anomalous position. The Federal Court has prohibited its recovery of a State-controlled price in the military market. The State law, however, still obligates it to pay to its producer members a State-controlled price for the same milk.

Petaluma Co-op has therefore been compelled to withdraw from the military bidding market. The direct result has been a reduction in its gross revenue amounting to approximately $14,000.00 each month, or $170,000.00 annually. This sum is vital to Petaluma Co-op's operating margin as a cooperative association and to its 275 farmer members.

ARGUMENT

ISSUES RAISED SHOULD BE RESOLVED BY THE SUPREME COURT

Appellants have stated that the current appeal from the District Court's order presents these questions:

1. Whether enforcement of the provisions of the California Milk Stabilization Act authorizing the establishment by the State Director of Agriculture of minimum prices at which dairy farmers may sell and distributors may purchase milk conflicts with the Armed Services Procurement Act of 1947.

2. Whether enforcement of the provisions of the California Milk Stabilization Act authorizing the establishment by the State Director of Agriculture of minimum prices at which distributors may sell milk conflicts with the Armed Services Procurement Act of 1947.

3. Whether enforcement of the provisions of the California Milk Stabilization Act against distributors or dairy farmers whose milk is sold to the United States at three particular military installations is constitutional.

4. Whether the District Court erred in permanently enjoining enforcement of the California Milk Stabilization Act as unconstitutional without trial and on motions for preliminary injunction (Action No. 39030) and for summary judgment (Action No. 39073) where the pleadings and affidavits raised issues of material facts.

5. Whether the District Court erred in failing to abstain from final decision pending construction by

the California Supreme Court of the California Milk Stabilization Act and California statutes relating to the acquisition of land and jurisdiction by the United States, and in enjoining appellants from proceedings in pending state Court actions.

Petaluma Co-op, as Amicus, concurs with this analysis and adopts it. Amicus likewise concurs with, and adopts, appellants' argument in support of their contention that these are substantial questions.

AN EXCEPTION OF A PORTION OF THE MILK BUSINESS DEFEATS THE PURPOSE OF THE STATE LAW

The California Milk Stabilization Act is an important exercise of California's police power over one of its largest industries. Its purpose is *stabilization*. A substantial portion of California's milk production is sold to the United States. The District Court's injunction herein excepts this business from the Act. The exception, or any exception, defeats the purpose of California's legislation, frustrates her police power, and invokes all the intolerable consequences which preceded the act and whose elimination is among its stated purposes. The California Act describes such consequences thus:

> "It is hereby declared that fluid milk and fluid cream are necessary articles of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare; and that the production, transportation,

processing, storage, distribution or sale of fluid milk and fluid cream in the State of California is an industry affecting the public health and welfare; that unfair, unjust, destructive and demoralizing trade practices have been carried on and are now being carried on in the production, marketing, sale, processing or distribution of fluid milk and fluid cream, which constitute a constant menace to the health and welfare of the inhabitants of this State and tend to undermine sanitary regulations and standards of content and purity, however effectually such sanitary regulations may be enforced; that health regulations alone are insufficient to prevent disturbances in the milk industry which threaten to destroy and seriously impair the future supply of fluid milk; and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity; that it is the policy of this State to promote, foster and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk, and to eliminate speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchase from producers."[1]

AN EXCEPTION AS TO A PORTION OF THE STATE LAW ITSELF DEFEATS ITS PURPOSE

Petaluma Co-op previously stated (supra, page 4) its difficulties under the present injunction in this case, which prohibits enforcement of the California Milk Stabilization Act in sales to the United States

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[1]Section 4201, California Agricultural Code

as to wholesale pricing, but not as to producer pricing. A major point before the Court is whether the California Act can or should be so enforced in part only. It cannot and should not. Its text, its context and its effect require the concurrent enforcement of its minimum producer pricing provisions and its minimum wholesale pricing provisions.

Under the California Act, the Director of Agriculture has no authority to separate these categorical provisions. To the contrary, he is required to treat them together. Specifically, he is required to establish ("designate and prescribe") minimum wholesale prices in marketing areas where minimum producer prices are in effect, and to terminate them where minimum producer prices are terminated.[2] Half an Act is no act at all.

THE STATE LAW DOES NOT CONFLICT WITH FEDERAL LAW

The District Court in this case ruled against enforcement of the California Milk Stabilization Act upon the ground that it conflicted with the Armed Services Procurement Act of 1947 (62 Statutes 21, 10 U.S.C. 2301 et seq.). The stated ground for this view, in the District Court's Memorandum Opinion herein, was that the California Act "places a prohibition on the Federal Government" within the meaning of this Court's—the Supreme Court's—decision in *Public Utilities Commission of California v. United*

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[2]Section 4351, California Agricultural Code

States.[3] The District Court undertakes to distinguish the case of *Penn Dairies v. Milk Control Commission,*[4] in which this Court had previously reached an opposite conclusion. The distinction is not well taken. In *Penn Dairies*, this Court permitted enforcement of the Pennsylvania Milk Control Law, in military milk buying, upon the express ground (318 U.S. at page 270) that:

> "(It) imposes no prohibition on the national government or its officers. They may purchase milk from whom and at what price they will, *without incurring any penalty.*" (Emphasis added.)

Federal procurement officers who buy milk in California may function "without incurring any penalty." The State of California does not claim that its Milk Stabilization Act places these Federal officers in criminal jeopardy. The Supreme Court of California (in *Pacific Coast Dairy v. Department of Agriculture,* 19 Cal. (2d) 818, 123 P. (2d) 442, reversed on other grounds, 318 U.S. 285 (1943)) said (19 Cal. (2d) at page 830):

> "The California Milk Control Act does not discriminate against the United States army nor substantially hinder its efficient operation . . . *The act regulates not the army but the distributors who are independent contractors with the federal government.* It is settled that such contractors are subject to State control, and that any consequent burden on the federal government is

[3] 355 U.S. 534 (1958)
[4] 318 U.S. 261 (1942)

speculative and remote (Citations)." (Emphasis added.)

With reference to sanctions to which Federal procurement officers are exposed, the California Milk Stabilization Act does not materially differ from the Pennsylvania Milk Control Law which was before this Court in the *Penn Dairies* case. The Armed Services Procurement Act was enacted by the Congress after the *Penn Dairies* decision. It does not exempt Federal buying from State milk control laws. If such laws interfere with a Federal function, the fact has obviously not occurred to the Congress.

Petaluma Co-op concurs with appellants' argument on the issue of California's jurisdiction over the Federal enclaves involved in this case (pages 14-24, Appellants' Jurisdictional Statement). Where a State has such jurisdiction, the *Penn Dairies* decision is clear authority for the State's collateral contention that it can enforce its milk control laws against persons selling milk to Federal agencies. The District Court's decision herein is in direct conflict with the *Penn Dairies* decision.

It conflicts, further, with the law on the same factual situation where a Federal marketing order is involved. The provisions of such order are enforced in sales of milk to Federal agencies (*Knudsen Brothers Dairy, Inc. v. Benson,* U.S.D.C. Conn., Civil Action 8145 (1960) (on appeal on other grounds, *Knudsen Brothers Dairy, Inc. v. Freeman;* Court of Appeals, Second Circuit, No. 26698)). In *Knudsen,* the District Court specifically disallowed the argu-

ment that enforcement of an assessment order conflicted with the competitive-bidding aspect of Federal procurement programs—and inevitably increased Federal costs. The same reasoning should apply in the instant case.

CONCLUSION

Petaluma Co-op, Amicus, submits that appellants' Jurisdictional Statement presents substantial questions requiring decision by this Court.

Dated, Santa Rosa, California,
November 14, 1961.

Respectfully submitted,
JOSEPH A. RATTIGAN,
Attorney for Amicus Curiae.